

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARVIN ALBERTO VIVAS-MORALES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

C.A. No. 03-312 Erie

**MEMORANDUM ORDER**

\_\_\_\_\_Plaintiff's civil rights complaint was received by the Clerk of Court on October 1, 2003 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on July 25, 2005, recommends that the complaint be dismissed for failure to prosecute and that the Defendant's motion to dismiss for lack of prosecution be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was attempted on Plaintiff by certified mail at York County Prison, his last known address of record, and on the Defendant. No objections were filed. After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 12<sup>th</sup> Day of August, 2005;

IT IS HEREBY ORDERED that Defendant's motion [Doc. No. 24] is GRANTED and the within civil rights action is DISMISSED for Plaintiff's failure to prosecute.

The report and recommendation of Magistrate Judge Baxter filed on July 25, 2005 is adopted as the opinion of the court.

s/ SEAN J. McLAUGHLIN  
United States District Judge

cc: All parties of record  
U.S. Magistrate Judge Baxter